

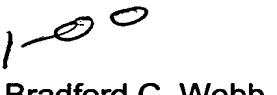
IN THE UNITED STATES PATENT OFFICE

In re reissue application of)
Bradford C. Webb) Reissue of
Serial No. NYA) Patent No. 5,422,376
Filed: Herewith) Issued: June 6, 1995
For: Synthetic Viscoelastic Material) Docket No. 1560B
for Ophthalmic Applications)

INVENTOR'S DECLARATION, PETITION AND
POWER OF ATTORNEY

Assistant Commissioner for Patents
Washington, D.C. 20231

Sir:


I, Bradford C. Webb, declare that:

1. I am a citizen of the United States of America and reside at 2245 North Green Valley Parkway, Henderson, Nevada 89014. I believe that I am the original, first and sole inventor of the invention described and claimed in U.S. Letters Patent No. 5,422,376 (hereinafter called "Patent") and in the above-identified reissue application and for which invention I, together with the assignee of record, Nestlé S.A., solicit a reissue patent. I do not know and do not believe that said invention was ever known or used in the United States of America before my invention thereof; I acknowledge my duty to disclose information of which I am aware which is material to the examination of this reissue application in accordance with 37 C.F.R. § 1.56; and I have reviewed and understand the contents of the specification, including the claims, as amended by any amendment specifically referred to herein.

2. I believe that the Patent is wholly or partially inoperative or invalid by reason of my claiming less than I had a right to claim in the Patent.

3. On information and belief, after issuance of the Patent and its assignment to Nestlé S.A. in July, 1996, a study of the file history of the Patent and relevant art was conducted on behalf of the assignee of the Patent. On information and belief, the study was undertaken after it was learned that certain individuals and/or companies had begun manufacturing in the United States hydroxypropylmethyl-cellulose products for ophthalmic use, which products purportedly possessed rheological properties similar to those of the patented compositions. As a result of this study, I now believe that the Patent contains error for failing to claim the invention as broadly as specifically set forth in amended claims 1, 13 and 25, and new claims 30-33 of this reissue application.

4. More specifically, on information and belief, during the study referred to in paragraph 3 hereof, it was discovered that the Patent contains error in that the known prior art did not require:

- a) that the claimed viscoelastic solutions be "free of particulate matter and gels greater than 0.5 μ m in diameter," or
- b) that the claimed processes include a 0.5 μ m filtration, a specific heating step (i.e. "to about 95°C"), a resuspension step, an autoclaving step and a degassing step.

5. Amended claims 1 and 25 address the error identified in paragraph 4(a) hereof, whereas amended claim 13 and new claims 30-33 address the error identified in paragraph 4(b) hereof.

6. I concur with the assignee's wish to amend the Patent to correct these errors.

7. The errors identified herein arose in the drafting of the claims as originally filed with the patent application without any deceptive intention on my part. The amendments effected by this reissue application do not result in any claim that is of the same or broader scope than any claim canceled during the prosecution of the original application; nor do they add any new matter. On information and belief, the Patent is not currently and has not in the past been the subject of litigation.

WHEREFORE, I pray that I may be allowed to surrender the Patent and that Letters Patent may be reissued for the same invention upon the above-identified specification. I hereby subscribe my name to this Declaration and Petition, and hereby appoint as my attorneys:

| | |
|-------------------|-------------------------|
| James A. Arno | Registration No. 26,145 |
| Gregg C. Brown | Registration No. 30,613 |
| Sally S. Yeager | Registration No. 32,757 |
| Barry L. Copeland | Registration No. 34,801 |
| Jeffrey S. Schira | Registration No. 34,922 |
| Patrick M. Ryan | Registration No. 36,263 |
| Michael C. Mayo | Registration No. 38,545 |

Please send all correspondence to:

Barry L. Copeland
Alcon Laboratories, Inc.
Patent Department Q-148
6201 South Freeway
Fort Worth, TX 76134-2099
Telephone: (817) 551-4322
Telefax: (817) 551-4610

with full power of substitution and revocation, to transact all business in the Patent and Trademark Office connected with the above-identified application and to receive all correspondence from the Patent and Trademark Office regarding the above-identified application.

I, the undersigned, declare further that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Executed this _____ day of _____, 1997.

Bradford C. Webb

(Post Office Address)

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Serial No. NYA) Patent No. 5,422,376
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for Ophthalmic Applications)

**OFFER TO SURRENDER PATENT AND CONSENT OF
ASSIGNEE TO FILING OF REISSUE APPLICATION**

Assistant Commissioner for Patents
Washington, D. C. 20231

Sir:

NESTLÉ S.A., Assignee of the entire right, title and interest in and to U.S. Patent No. 5,422,376 which issued on June 6, 1995, for SYNTHETIC VISCOELASTIC MATERIAL FOR OPHTHALMIC APPLICATIONS and which names Bradford C. Webb as the inventor thereof, hereby offers to surrender said patent in accordance with Rule 178 of the Rules of Practice and hereby consents to the filing of a reissue application based upon U.S. Patent No. 5,422,376. This offer of surrender is accompanied by a Request for Title Report and the declaration of the inventor, Bradford C. Webb, that the original patent is lost or inaccessible.

Documentary evidence of the assignment of the entire right, title and interest in U.S. Patent No. 5,422,376 is recorded at the Patent and Trademark Office at Reel No. 8085 and Frame No. 0575. The undersigned certifies that he or she has reviewed such documentary evidence of the claim of title to such patent and, to the best of the undersigned's knowledge and belief, title is in the name of Nestlé S.A.

NESTLÉ S.A.

By _____

Title: VP

Date: 6/3/97

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Serial No. NYA) Patent No. 5,422,376
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For: Synthetic Viscoelastic Material) Docket No. 1560B
for Ophthalmic Applications)

POWER OF ATTORNEY

Assistant Commissioner for Patents
Washington, D.C. 20231

Sir:

The undersigned being Assignee of the entire right, title and interest in and to U.S. Patent No. 5,422,376 which issued on June 6, 1995 for SYNTHETIC VISCOELASTIC MATERIAL FOR OPHTHALMIC APPLICATIONS, as evidenced by the Assignment recorded in the Patent and Trademark Office at Reel 8085, Frame 0575 on August 19, 1996, hereby appoints as its attorneys:

| | |
|-------------------|-------------------------|
| James A. Arno | Registration No. 26,145 |
| Gregg C. Brown | Registration No. 30,613 |
| Sally S. Yeager | Registration No. 32,757 |
| Barry L. Copeland | Registration No. 34,801 |
| Jeffrey S. Schira | Registration No. 34,922 |
| Patrick M. Ryan | Registration No. 36,263 |
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Please send all correspondence to:

Barry L. Copeland
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Telefax: (817) 551-4610

with full power of substitution and revocation, to transact all business in the Patent and Trademark Office connected with the above-identified application and to receive all correspondence from the Patent and Trademark Office regarding the above-identified application.

Executed this 3 day of June, 1997.

NESTLÉ S.A.

By PK

Title: VP

Date: 6/3/97

-2-

FORM PTO-122
(REV. 12-87)

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

TITLE REPORT

PAPER NO.

2

A. APPLICATION FILE DATA

1. SERIAL NO.

08870199

2. FILED

6-5-97

3. INVENTOR(S)—FULL NAME(S)

BRADFORD C. WEBB

4. DIVISION OF

5. CONTINUATION OF

6. REISSUE OF

5422376

7. SUBSTITUTE OF

B. ASSIGNMENT RECORD DATA

The assignment records reveal that the Title appears to be vested in:

- (1.) Inventor(s)
- (2.) As endorsed
- (3.) As the record now stands, the patent, when granted, will issue in the name of the inventor(s).
- (4.) Other *NESTLE*

EXAMINED
UP TO AND INCLUDING

THIS CERTIFICATE
DATED

9-15-97

BRANCH CHIEF OF ASSIGNMENT SEARCH BRANCH

Dates